



FEDERAL ELECTION COMMISSION
Washington, DC 20463

December 2, 1999

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1999-30

Kenneth W. Haar
Executive Director
Nebraska State Democratic Party
985 So. 27th Street
Lincoln, NE 68510

Dear Mr. Haar:

This responds to your letter dated October 12, 1999, on behalf of the Nebraska State Democratic Party ("NDP"), concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the allocation of non-Federal points for mixed Federal/non-Federal activity.

The NDP's political committee is registered with the Commission as the Nebraska Democratic State Central Committee. Pursuant to 11 CFR 106.5 and 104.10(b)(1), the NDP, as a State party committee with separate Federal and non-Federal accounts, must allocate its administrative and generic voter drive costs between those accounts using the "ballot composition method." As discussed below, State party committees in States with bicameral legislatures are usually able to avail themselves of a non-Federal point with respect to each of the houses in computing the ballot composition formula for determining the allocation of administrative expenses and generic voter drive costs. See 11 CFR 106.5(d). Unlike every other State legislature, the Nebraska legislature consists of one house; the individual members of the legislature each hold the office of State Senator.¹ The NDP has therefore been using only one non-Federal point with respect to the legislative office represented, and you request an advisory opinion that would allow the NDP to take two points in the future. You state that the one Nebraska house "serves as both the senate and representative body," and that Nebraska State parties "spend as

¹ One half of the house is up for election every two years.

much time, energy and money on our legislative races” as State parties in other States because of the significance of the one body.²

Under the ballot composition method, the allocation by a State party committee of administrative and generic voter drive expenses is based on the ratio of Federal offices expected on the ballot to total Federal and non-Federal offices expected on the ballot in the next general election to be held in the State. This ratio is determined by the number of categories of Federal offices on the ballot and the number of categories of non-Federal offices on the ballot. 11 CFR 106.5(d)(1)(i). The regulations list the relevant Federal and State offices and how they should be counted for purposes of the ratio. The offices of President, U.S. Senator, and U.S. Representative count as one Federal point each, and the offices of Governor, State Senator, and State Representative count as one non-Federal point each, if such offices are expected on the ballot in the next general election. 11 CFR 106.5(d)(1)(ii).

Other non-Federal offices appearing on the ballot are also counted in a limited manner. If other partisan statewide executive candidates will be on the next general election ballot, these offices count as no more than two non-Federal points in the ratio. If any partisan local offices are expected on the ballot in any regularly scheduled election during the two-year cycle, a State party committee may use another non-Federal point. Finally, the rules allow State party committees to include an additional non-Federal point. 11 CFR 106.5(d)(1)(ii).

The Explanation and Justification for the allocation regulations explains that the ballot composition method uses an “average ballot” approach to determine a State party committee’s allocation ratio. *Methods of Allocation Between Federal and Non-Federal Accounts; Payments; Reporting*, 55 Fed. Reg. 26058, 26064 (June 26, 1990). In other words, the ratio is designed to reflect the ballot that will be seen by the voter in the next general election. The average ballot concept is a simplified approach that produces a ratio “by counting the categories of offices on the ballot rather than counting each individual office.” *Id.* In its Explanation and Justification of the 1992 amendments to the regulations on the ballot composition ratio, the Commission, in its discussion of the addition of a non-Federal point for every State and local party committee, noted that the ratio “was never anticipated to precisely reflect all state and local party activity in all states in all election cycles.” The Commission stated that the average ballot approach provided “the necessary flexibility in this area” and represented a “reasoned balance” between the need for greater standardization and the need to reflect differences between different States and types of political committees. *Allocation of Federal and Non-Federal Expenses*, 57 Fed. Reg. 8990, 8991 (March 13, 1992).

You refer to the effort made by Nebraska State parties to elect the members of the one house. There may be a number of variations as to the efforts that parties in different States choose to exert with respect to particular offices. Nevertheless, in arriving at a

² As indicated on the Schedule H1 of its 1999 Mid-Year report, the Nebraska Republican Party also uses one non-Federal point with respect to State legislative races.

reasoned balance as to Federal/non-Federal allocation, the Commission regulations are explicit, allocating one point per State legislative office on the ballot.

With respect to your equitable arguments for the ability to use two points, the Commission also notes that permitting the NDP to use an extra point may create a different type of inequity. This may occur when Nebraska is compared to the States in which the entire State Senate is elected every four years and the lower house is elected every two years.³ In those two-house States, a State party committee may normally use only one state legislative point in the election cycle in which the State Senate is not elected. By contrast, an affirmative answer to your request would permit a Nebraska State party committee to use two points in every cycle, in an election involving only one half of the seats in one house.

Based on the foregoing, the Commission concludes that the approach of the ballot composition formula as set out in the regulations should be applied to the NDP, and, therefore, it may only take one point with respect to elections to the State legislative office. As indicated above, in developing a uniform formula, the Commission was aware that there may be different circumstances in various States.

This response constitutes an advisory opinion concerning application of the Act and Commission regulations to the specific transaction or activity set forth in your request. 2 U.S.C. §437f.

Sincerely,

(signed)

Scott E. Thomas
Chairman

³ These States include Kansas, Michigan, Minnesota, New Mexico, and South Carolina.